

PART VIII: Administration

§3554. Powers of commissioner

A. In addition to other powers granted by this Chapter, the commissioner within the limitations provided by law may:

(1) Receive and act on complaints, take action designed to obtain voluntary compliance with this Chapter, including entering into voluntary consent or compliance agreements with persons conducting activities regulated by this Chapter without the necessity of a hearing or order, or commence proceedings on his own initiative;

(2) counsel persons and groups on their rights and duties under this chapter;

(3) establish programs for the education of consumers with respect to credit practices and problems;

(4) make studies appropriate to effectuate the purposes and policies of the chapter and make the results available to the public; and

(5) adopt, amend, and repeal substantive rules when specifically authorized by this chapter, and adopt, amend, and repeal procedural rules to carry out the provisions of this chapter.

B. The commissioner shall have the power to promulgate rules and regulations necessary for the enforcement of but not inconsistent with this chapter. Such rules and regulations shall be referenced to the sections or subsections which they interpret or apply. Copies of rules and regulations shall be sent to all persons who have filed notification with the commissioner at least thirty days prior to the effective date of the rule or regulation.

C. (1) The commissioner is hereby authorized to request and obtain from any other department or agency of the state and such are hereby authorized to furnish to the commissioner any records or information relevant to any consumer complaint or consumer credit transaction investigation or hearing by the commissioner, but excluding records or information otherwise provided by law to be privileged. The commissioner, in his sole discretion, when requested in writing, may disclose or cause the employees of the office of financial institutions to disclose records of the office of financial institutions concerning any person governed by Title 9, when such records are requested by another state or federal agency having authority to investigate or license such person governed by Title 9, or are requested by a bankruptcy trustee or any law enforcement agency in connection with an investigation to recover assets of a current or former licensee.

(2) If the lender's records are located outside the state, the lender, at the commissioner's option, shall make those records available to the commissioner at a location within the

state convenient to the commissioner, or pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

D. The commissioner shall have the power to subpoena any person for the purpose of discovering violations of this chapter.

E. The commissioner may, upon notice to a person regulated by this Chapter and reasonable opportunity to be heard at an administrative hearing, revoke or suspend the license, notification, or registration if:

(1) The person has violated any provisions of this Chapter or any rule or order lawfully made by the commissioner under this Chapter.

(2) The person has violated any provisions of a voluntary consent or compliance agreement which has been entered into with the commissioner.

(3)(a) The person has intentionally or knowingly provided or caused to be made any false or fraudulent information or financial statements to the commissioner.

(b) The person has intentionally or knowingly failed to state in any application for a license, registration, or notification any material fact which is required to be stated therein.

(c) The commissioner finds any fact or condition exists which, if it had existed at the time of the original application for licensure, notification, or registration, would have warranted the refusal of its issuance.

(4) The person fails to maintain records as required by the commissioner by rule, after being given written notice and thirty days within which to correct the failure to maintain such records. Upon good cause shown, the commissioner may grant up to two thirty-day extensions within which the recordkeeping violations may be corrected.

(5) The person violates any provision of a regulatory or prohibitory statute, and has been found to have violated such statute by the governmental agency responsible for determining such violations.

(6) The person engages in fraudulent conduct, including a finding of civil fraud.

(7) The person has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the business of making loans.

(8) A license, notification, or registration the person holds in any other state to engage in the business of making consumer loans or consumer credit sales is revoked or suspended for acts or practices which also violate the provisions of this Chapter.

(9) The person violates the written restrictions or conditions under which his license, registration, or notification was issued.

(10) The person transfers consumer loans to an unlicensed or non-exempt person, without the prior written approval of the commissioner, except in accordance with the provisions of this Chapter or any rule pursuant thereto.

(11) The person has abandoned the physical location for which the license, registration, or notification was issued, has not applied for a change of location, and fails to respond within thirty days to a certified mail notice sent to his registered agent for service of process and to his mailing address.

(12) A person which is a business entity is used as a means of furthering a criminal act or a civil fraud.

(13) Another consumer loan license held by the same person or his parent company is revoked for serious and repeated violations of the Louisiana Consumer Credit Law.

(14) A person fails, after notice and without lawful excuse, to obey an order or subpoena issued by the commissioner.

F. The commissioner may, if he finds that the public safety or welfare requires emergency action, order an immediate suspension of a license, registration, or notification under this Chapter, or order a person to immediately cease and desist from an act or practice regulated by this Chapter and to take affirmative action to prevent the continuance of such act or practice pending a hearing, whenever it appears that any person has engaged in or is engaging in any act or practice which is prohibited by this Chapter, or by any rule, regulation, or order promulgated or issued thereunder, or any person has failed to act under any affirmative duty imposed by this Chapter, or rule or regulations promulgated or issued thereunder, subject to the right of such person to a hearing as provided in the Administrative Procedure Act. Such order shall become effective upon service upon such person and shall provide for a hearing and opportunity to be heard within ten days of the order, unless extended by mutual consent of the parties. An order of immediate suspension shall be temporary and shall expire automatically if the commissioner fails to afford notice and an opportunity for hearing pursuant to the Administrative Procedure Act. Such temporary order shall remain effective and enforceable pending the completion of such administrative proceedings or until such time as the commissioner shall dismiss the charges specified in such notice.

G. The commissioner shall conduct a hearing for the purpose of revoking or suspending the license of a licensed lender when three aggrieved parties not related by marriage to each other have filed affidavits stating facts reasonably showing that the licensed lender

has engaged in fraudulent conduct.

H. The commissioner may, upon notice to a person engaging in activities regulated under this Chapter and a reasonable opportunity to be heard at an administrative hearing, do one or more of the following:

(1) Place permanent or temporary restrictions upon a person's exercise of any of the privileges granted by this Chapter, if the person is found to have violated any of the provisions of this Chapter or of any rule promulgated by the commissioner.

(2) Issue and serve upon a person an order requiring such person to cease and desist and take corrective action whenever the commissioner finds that such person is violating or has violated any provisions of this Chapter, any rule or order adopted under this Chapter, or any written agreement entered into with the office of financial institutions.

(3) Issue a public reprimand.

I.(1) The commissioner may remove from office any individual with power to direct the management or policies of a person regulated by this Chapter, including but not limited to any officer, director, or manager, if any such individual is convicted of, pleads guilty to, or is found guilty after a plea of nolo contendere, of any felony under any state or federal law, or of a misdemeanor of which fraud is an essential element or which involves any aspect of the business of making loans. Prior to such removal, the commissioner shall serve written notice upon such individual and upon the person regulated by this Chapter, of his intent to remove such individual from office. If such individual remains in office thirty days after such written notice, the commissioner may revoke the license or other privileges granted by this Chapter without any further notification or a hearing.

(2) The commissioner may, upon notice to an individual with the power to direct the management or policies of a person regulated by this Chapter, including but not limited to any officer, director, or manager, and after reasonable opportunity to be heard at an administrative hearing, remove the individual from participating in the affairs of a licensee if that individual has been prohibited, temporarily or permanently, by any other state or federal regulator from participating in activities for which he is licensed under this Chapter.

J. If it is found, after an administrative hearing, that consumers who have done business with the extender of credit have been aggrieved by an improper loan finance charge, credit service charge, deferral charge, delinquency charge, or improper rebate, or the inclusion of an improper item in the amount financed, the commissioner may institute a civil action on behalf of such consumers in any form which he deems appropriate to effectuate the provisions of this Subsection, in order to recover any such money improperly exacted from the consumer by the extender of credit, provided that sixty days have passed after giving notice by certified mail of his intentions. All monies recovered shall be returned to the aggrieved consumer in a manner deemed to be reasonable and which shall assure prompt and expeditious payment to the consumer, in whole or in part, and is calculated to minimize the expenses associated with the distribution of such monies.

K. Whenever an alleged violation has occurred under this Section which necessitates action on the part of the commissioner, and the person has arbitrarily refused to cooperate with the commissioner after due notice, the commissioner may send an investigator to investigate the alleged violation.

(1) The commissioner, after investigation of a complaint and after a proper opportunity for hearing and after finding that a provision of this Chapter has been violated, may issue an order to cease and desist from further violations of a like nature; or

(2) The commissioner, upon notice to the extender of credit and after reasonable opportunity to be heard, provided that he finds that the extender has willfully failed to comply with the provisions of this Chapter to an extent to warrant belief that the business will not be operated honestly and fairly within the purposes of this Chapter, may revoke the privileges granted under this Chapter.

L. The commissioner shall have authority to examine the books, records, and accounts of all persons regulated under or making loans subject to the Louisiana Consumer Credit Law. Such examination shall not occur more frequently than once a year unless there arises the necessity for an additional examination based on a probable cause.

M. If any part of the regulations promulgated is declared invalid, all parts that are severable from the invalid parts shall remain in effect.

§3554.1. Commissioner's powers; unlicensed persons

A. For the purpose of discovering violations of this Chapter or securing information lawfully required by it hereunder, the commissioner may at any time investigate the loans and business and examine the books, accounts, records, and files used therein of every person engaged in or believed to be engaged in any business regulated by this Chapter, whether such person shall act or claim to act as principal or agent or within or without the authority of this Chapter. For such purpose the commissioner shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of such persons. The commissioner may require the attendance of and examine under oath all persons, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

B. No person, except as authorized by the provisions of this Chapter, shall, directly or indirectly, charge, contract for or receive any interest, charge, or consideration upon the loan, use, or forbearance of money or credit for a consumer purpose.

C. If any individual without lawful excuse fails to obey a subpoena or to give testimony when directed to do so by the commissioner or obstructs the proceedings by any means, whether or not in the presence of the commissioner that individual is guilty of contempt. The commissioner may file a complaint in a district court setting forth the facts constituting the contempt and requesting an order returnable in not less than two days or more than five days, directing the alleged offender to show cause before the court why he should not be punished for contempt. If the court determines that the respondent has committed any alleged contempt, the court shall punish the offender for contempt.

D. If an investigation or examination by the commissioner shall disclose that any person has violated the provisions of this Chapter relative to licensing requirements other than as a result of a bona fide error, the costs of such investigation or examination shall be borne by the person investigated or examined and the commissioner may maintain an action in any court to recover such costs.

E. Whenever the commissioner has reasonable cause to believe that any person is violating, is threatening to violate, or is about to violate any provision of this Chapter relative to licensing, notification, or registration requirements, he may in addition to all actions provided for in this Chapter, and without prejudice thereto, order such person to cease and desist from such violation, and/or may order such person to cease collecting or enforcing such consumer loans subject to the Louisiana Consumer Credit Law, unless and until such person is licensed to make consumer loans pursuant to this Chapter. An action may be brought by the commissioner or by the attorney general of Louisiana to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereto as the court may deem reasonably necessary to prevent violations of the licensing, notification, or registration provisions of this Chapter through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court.

F. In addition to any other authority conferred, the commissioner may impose a fine or penalty not exceeding one thousand dollars upon any person required to be licensed under this Chapter who, at an administrative proceeding is determined to have violated the licensing provisions of this Chapter. Such fines may be imposed by a court in which the commissioner has brought an action authorized by this Section. For the purposes of this Section, each day that an unlicensed person engages in the activities regulated by this Chapter shall constitute a separate violation.

3554.2. Powers of commissioner; debt collectors

A. Repealed by Acts 1993, No. 446, §2, eff. Sept. 1, 1993.

B. The commissioner and/or the attorney general may initiate and conduct investigations as may reasonably be necessary to establish the existence of violations or noncompliance with this Section, or any rules and regulations issued hereunder, and may assess the debt collector for reasonable costs of any such investigation.

§3555. Injunctions; investigations; enforcement actions; civil penalties; costs

A. The commissioner may bring a suit in a court of competent jurisdiction and venue to restrain and enjoin an extender of credit or a person acting on his behalf or both from engaging in future violations of this Chapter or from engaging in a course of fraudulent conduct in inducing consumers to enter into fraudulent consumer credit transactions or in the collection of debts in violation of law.

B. If the court finds that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in fraudulent conduct or in conduct that violates this Chapter, it may grant injunctive relief as otherwise provided by law but without the furnishing of a bond by the commissioner.

C. If an investigation or examination conducted by the commissioner discloses that any person has violated an order of the commissioner under the provisions of this Chapter, or has violated a consent agreement entered into with the commissioner, other than as a result of a bona fide error, the cost of such investigation or examination shall be borne by the person investigated or examined. If the commissioner is granted an injunction pursuant to this Section, or is granted a court order enforcing an order of the commissioner or enforcing any provision of a consent agreement, the commissioner may recover from the defendant or defendants costs and reasonable attorney fees incurred in bringing such action.

D. Civil penalties paid to the commissioner, and overcharge violations of five dollars or less per consumer ordered by the commissioner to be refunded, and paid to the commissioner, shall be credited to a special fund hereby created in the state treasury to be known as the Louisiana Consumer Credit Education Fund. Such monies shall be deposited in the fund after compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to such monies being placed in the state general fund. The monies in this fund shall be invested by the state treasury in the same manner as monies in the state general fund, and interest earned on the investment of such monies shall be credited to the fund. The monies in the fund, and any interest or dividend which may be earned, shall be used solely to finance education programs for consumers and lenders concerning the provisions of the consumer credit laws, and for reimbursement of the office of financial institutions' costs in enforcing the provisions of this Chapter, as provided in R.S. 9:3554(A)(3).

§3556. Method of procedure

A. The commissioner may, in his discretion, conduct such investigations and hearings as he deems necessary to ascertain possible violations of this Chapter or any rule or order promulgated or issued hereunder. Such hearings may be private, if the commissioner, in

his sole discretion, so determines after considering the interests of the person afforded the hearing and the need to protect the public interest. If a public hearing is held and any confidential records of the office of financial institutions are produced by discovery or introduced into evidence at the hearing, such records shall not become public but shall be sealed.

B. The Louisiana Administrative Procedure Act shall supplement this Chapter for the purpose of administrative hearings.

§3556.1. Records; rules

A. Each person regulated by this Part shall maintain records of its consumer credit sales or loans as required by the commissioner or by rule. Persons who make consumer credit sales and do not transfer or assign their agreements to a supervised financial organization, a lender who files notification pursuant to R.S. 9:3564, or a licensed lender within thirty-five days, as provided by R.S. 9:3521, shall comply with the Records Retention Rule for licensed lenders, and shall promptly notify the commissioner that such person is collecting or otherwise enforcing consumer sales agreements or consumer loans and shall further retain copies of all such documents and contracts on file for examination by the commissioner.

B. Any records to be retained pursuant to this Section or regulations promulgated hereunder may be reproduced by any photographic, photostatic, microfilm, microcard, or miniature or microphotographic process, or by any mechanical or electronic recording or re-recording electronic or optical imaging, chemical process, or other process or technique which accurately reproduces the original or forms or creates a durable medium for accurately reproducing the original record.

C. Each reproduction shall be treated for all purposes as if it were the original record, item, or instrument.

D. The commissioner may promulgate such rules and regulations in accordance with the Administrative Procedure Act as he deems necessary to effect the purposes of this Part.

§3556.2. Guidance by commissioner; advisory opinions

A. Advisory opinions and interpretations of the office shall not be considered rules requiring compliance with the rulemaking process under the Louisiana Administrative Procedure Act.

B. This Section shall only have prospective application.

§3556.3. Violations; penalties

A person subject to this Part who violates a provision of this Chapter may be fined up to one thousand dollars for each violation. The commissioner may maintain a civil action in a court of competent jurisdiction to recover such fines, together with his costs and attorney fees incident to such action.